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09/840,548	04/23/2001	Doug Rollins	MTIPAT.191A	3928

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EXAMINER	
BURLESON, MICHAEL L	
ART UNIT	PAPER NUMBER
2625	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	09/840,548	ROLLINS, DOUG	
	Examiner	Art Unit	
	MICHAEL BURLESON	2625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 November 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5-9,11,13-16 and 21-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5-9,11,13-16 and 21-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11/20/2008 have been fully considered but they are not persuasive.

2. Regarding claim 1, Applicant states that none of the references cited describe an internet service provider that sends a facsimile message to a target transceiver in the same area code as the internet service provider or sending a message to a target transceiver that is different than the subscribers of the internet service provider. Examiner disagrees with Applicant. McHale teaches that the computer (22) and modem (30) are supported by digital protocol, which is defined as any communication protocol, including TCP/IP and other internet protocols (column 3, lines 45-61), which means that internet access can be provided to a plurality of subscribers and sent to a different target transceiver (column 3, lines 62-67).

3. Applicant states that none of the references cited teach sending a facsimile message to a target transceiver with an inactive internet access modem. Examiner disagrees with Applicant. McHale teaches that modem (30) is supported by any appropriate protocol which does not limit it to facsimile message protocols (column 3, lines 45-54). McHale also teaches that an available modem, which is a modem that supports any appropriate protocol, is determined and selected to send a message (column 10, lines 6-14).

4. Applicant states that none of the references cited teach a variable wait time for sending an outgoing facsimile based at least in part on the number of subscribers that

send in-bound requests to access the internet and a variable wait time for sending a facsimile based on historical data. Examiner disagrees with Applicant. McHale teaches that a time interval before modem (30) should attempt communication with selected modem in modem pool and historical connection information (column 10, lines 27-37).

5. Applicant states that none of the references cited teach of sending a facsimile confirmation from the target server to the sending server. Examiner disagrees with Applicant. McHale teaches of sending an acknowledgement to modem (30).

6.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, sending with an internet access provider, a facsimile message to a target transceiver, sending a message to a target transceiver that is different than the subscribers of the internet service provider, sending as outbound facsimile transmission with the modems that receive in-bound requests for access to the internet from the subscribers, and sending a facsimile message to a target transceiver with an inactive internet access modem. Since the dial-up modem is not claimed in present invention, this argument is moot.

7. Claims 1,3,5-9,11,13-16 and 21-24.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1,3,5-9,11,13-16 and 21-24 are rejected under 35 U.S.C. 102(b) as being unpatentable over McHale US 5668857.

2. Regarding claim 1, McHale teaches a method of communicating a message via a computer network (column 3,lines 12-18). McHale teaches providing internet access services to a plurality of subscribers with a target server by receiving with a plurality of modems connected to the target server a plurality of in-bound requests from the subscribers for access to the Internet, wherein the target server is located within a same local-toll area of a public switched telephone network as a target transceiver, and wherein the target transceiver is different than the subscribers sending in-bound requests to the target server; (column 3,lines 54-61, column 4,lines 26-36 and column 10,lines 23-25).

3. McHale teaches receiving at the target server via the Internet a message from a sending server wherein the message is directed to the target transceiver, and wherein the messages are to be sent as outbound facsimile transmissions from the target server

to the target transceiver, and wherein the modems that receive the in-bound requests for access to the Internet from the subscribers are further configured to transmit the message as a facsimile transmission from the target server to the target transceiver via the public switched telephone network (column 9, lines 66—column 10, lines 1-20);

4. McHale teaches determining with a processor whether one or more modem ports at the target server is inactive such that at least one of the modem ports is not receiving in-bound requests for Internet access from one or more of the subscribers; (column 10,lines 11-21 and 26-32).

5. McHale teaches if none of the modem ports are inactive, applying a variable wait time, wherein a duration of the variable wait time is applied based at least in part on historical data, based at least in part on the number of modems, and based at least in part on the number of subscribers (column 10, lines 27-37);

6. McHale teaches after the variable wait time, determining with a processor whether one or more of the modem ports is inactive (column 10, lines 27-37);

7. McHale teaches sending the message as an outgoing facsimile transmission via an available modem and the public switched telephone network to the target transceiver if at least one of the modem ports is inactive (column 10, lines 27-37);

8. McHale teaches sending a confirmation from the target server to the sending server confirming the sending of the message as a facsimile transmission to the target transceiver (column 10, lines 27-37).

9. Regarding claim 2, McHale teaches storing the message at the second server (column 10,lines 6-10).

10. Regarding claim 3, McHale teaches reserving an available modem for transmitting the message to the target transceiver (column 10,lines 22-32).

11. Regarding claim 5, McHale teaches determining whether one or more of the modem ports is inactive is performed periodically at predetermined times or at start-up of the second server or after one of the modems is removed or another of the modems is added (column 11,lines 4-20).

12. Regarding claim 6, McHale teaches saving the active or inactive state of one or more of the modems in a memory (column 8,lines 48-52).

13. Regarding claim 7, McHale teaches queuing the message for sending at a later time if there is no modem available for immediate sending (column 10,lines 26-37).

14. Regarding claim 8, McHale teaches the wait time is based upon at least one characteristic of the load upon the modems (column 11,lines 4-21).

15. Regarding claim 9, McHale teaches sending a transmittal report to a transceiver having originated the message (column 10,lines 22-25).

16. Regarding claim 11, McHale teaches receiving the message, wherein receiving the message includes handling the message according to the T.37 standard (column 3,lines 45-61).

17. Regarding claim 13, the steps of method claim 1 performs all of the means of system claim 13. Thus claim 13 is rejected for the same reasons as discussed in the rejection of claim 1.

18. Regarding claim 14, the steps of method claim 2 performs all of the means of system claim 14. Thus claim 14 is rejected for the same reasons as discussed in the rejection of claim 2.

19. Regarding claim 15, the steps of method claim 3 performs all of the means of system claim 15. Thus claim 15 is rejected for the same reasons as discussed in the rejection of claim 3.

20. Regarding claim 16, the steps of method claim 7 performs all of the means of system claim 16. Thus claim 16 is rejected for the same reasons as discussed in the rejection of claim 7.

21. Regarding claim 21, McHale teaches a method of communicating a message via a computer network (column 3,lines 12-18).

22. McHale teaches receiving a message from a transceiver and a first server at a second server such that a second transceiver and the second server are located within a same local-toll area of a public switched telephone network and wherein the public switched telephone network is connected to the second server and to the second transceiver; (column 3,lines 54-61, column 4,lines 26-36 and column 10,lines 11-21 and 23-32).

23. McHale teaches providing internet access services with the second server to a plurality of subscribers with a plurality of modems connected to the target server, wherein the modems receive a plurality of in-bound requests from the subscribers for access to the Internet, and wherein the modems are configured to communicate the

message to recipients via the public switched telephone network (column 3, lines 62-67 and column 10,lines 6-10).

24. McHale teaches receiving and storing the message at the second server (column 10,lines 6-10);

25. McHale teaches determining whether one or more of the modems are inactive such that at least one of the modems is not in communication with one or more of the subscribers (column 10,lines 11-21 and 26-32);

26. McHale teaches determining and applying a variable wait time when modems are not inactive, wherein the duration of the variable wait time is applied based at least in part on historical data and based at least in part on a number of the modems (column 10,lines 11-21 and 26-32);

27. McHale teaches determining availability of the modems after the variable wait time (column 10,lines 26-32);

28. McHale teaches if one of the modems is available after the variable wait time, sending the message via an available one of the modems and the public switched telephone network to the second transceiver (column 10,lines 11-21 and 26-32).

29. Regarding claim 22, McHale teaches receiving and storing includes processing the message according to a store-and-forward protocol (column 10,lines 3-21).

30. Regarding claim 23, McHale teaches reserving an available modem for sending the message (column 10,lines 22-32).

31. Regarding claim 24, McHale teaches queuing the transmission of the message, wherein queuing transmission of the message includes the wait time that is based upon

at least one characteristic of the load upon the modems (column 10,lines 26-37 and column 11,lines 4-21).

Conclusion

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Burleson whose telephone number is 571-272-7460. The examiner can normally be reached Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Twyler Haskins can be reached on 571-272-7406.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael Burleson/

Examiner, Art Unit 2625

Michael Burleson

Patent Examiner

December 8, 2008

/Twyler L. Haskins/

Supervisory Patent Examiner, Art Unit 2625